

Appeal

Application

Planning Building and Development
Room 166, Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Phone: (540) 853-1730 Fax: (540) 853-1230

Application Checklist: ☒ Application Form
☒ Written Narrative
☒ Exhibits
☒ Filing Fee


**ROANOKE
RECEIVED**

MAR 12 2015

CITY OF ROANOKE
PLANNING BUILDING &
DEVELOPMENT

Date: March 12, 2015

Property Information:

Street Address: 508 Huntington Blvd, NE
Official Tax No(s): Parcel # 3181012
Size of Property (acres or square feet): 60467, 1.3881 Acres
Base Zoning District: RM-1 Overlay Zoning District:
Request is made for an appeal from Section 36.2- 424, Zoning, Code of the City of Roanoke (1979), as amended.

Briefly describe the
appeal, specifying the
grounds for the appeal:

See attached. This Application is
an amendment + supplement to the
Application Filed by Mr. Atkins on
December 17, 2014.

Applicant Information:

Name: Michael Atkins Phone Number: 540-915-0502
Address: 508 Huntington Blvd, NE E-Mail: N/A
Michael Atkins
Applicant's Signature:

Owner Information:

Name: Michael Atkins Phone Number: 540-915-0502
Address: 508 Huntington Blvd, NE E-Mail: N/A
Michael Atkins
Owner's Signature:

Application accepted as submitted in accordance with the provisions of Chapter 36.2, Zoning, Code of the City of Roanoke (1979), as amended.

Tina M. Carr/crm 3/12/15 April 8, 2015
Secretary to the Board's Signature Intake Date Public Hearing Date

Monica L. Mroz

Telephone: 540-345-1041
Facsimile: 540-345-5789
monica@vatnals.com

PLEASE SEND WRITTEN
CORRESPONDENCE
TO THE ROANOKE ADDRESS

**LICHTENSTEIN
FISHWICK PLC**
Attorneys & Counselors at Law

Roanoke Office:
Liberty Trust Building
101 S. Jefferson St., Suite 500
Roanoke, VA 24011

P.O. Box 601
Roanoke, VA 24004-0601

Charlottesville Office:
Enterprise Center
401 E. Market Street, Suite 105
Charlottesville, VA 22902
(434) 220-3765

March 12, 2015

Via Hand Delivery

Planning Commission Office
215 Church Avenue, SW
Room 166, Municipal Building
Roanoke, VA 24011

Re: Amended and Supplemental Application for BZA Appeal of Michael Atkins

Dear Sir or Madam:

Enclosed please find an amendment and supplement to the Application filed on December 17, 2014. We have included an additional filing fee in the event it is required.

Thank you for your attention to this matter. If you require any further information, please do not hesitate to contact me.

Sincerely,

LichtensteinFishwick PLC



Monica L. Mroz

cc: Michael Atkins & Darryl Thompson
Steve Talevi, Assistant City Attorney

CITY OF ROANOKE: BOARD OF ZONING APPEALS

In Re: Appeal Application Originally Filed December 17, 2014 and Amended and Supplemented by Application filed March 12, 2015

Supplemental Narrative Including Grounds for Appeal:

Appellant, Michael Atkins, by counsel, files this Supplemental Narrative in support of his Amended Appeal Application, and in support of his original Appeal Application, dated December 17, 2014.¹ Appellant incorporates by reference his previous submission in response to the alleged zoning violation. Mr. Atkins requests that the Zoning Administrator's decision be overturned for the following reasons: the Gravitron does not meet either the City Code or recently Amended Zoning Ordinance's definitions of commercial vehicle; alternatively, the Gravitron qualifies for treatment as a non-conforming use; the Gravitron may be handled under the zoning ordinance with proper buffering and screening; and the Zoning Administrator's decision has been unduly influenced and fueled by a pattern of harassment against Mr. Atkins and his partner which the City and Planning Commission should not condone or authorize.

Amendment is permissible under § 36.2-510 and will allow the applicant and other interested parties a meaningful and fair opportunity to be heard. This Amendment is timely and will allow for proper notice in advance of the April 8, 2015 meeting.

Mr. Atkins and his partner, Daryl Thompson, own a private collection of vintage amusement rides. In July 2014 they put a contract on the house and approximately 1.5 acres at 508 Huntington Blvd., NE to house and accommodate their incredible collection. They closed on the property on August 29, 2014. Before the closing had even taken place, they began planning and working on their new home. Ultimately this would include a lavish backyard, complete with their amusement rides, for them to privately share with friends and family. Some of these rides had been stored on other residential property prior to the closing without issue with the city or the planning commission.

Before Mr. Atkins and Mr. Thompson had even moved into the home, their neighbor Mr. Ferguson approached them with an offer to purchase part a part of the Atkins property that adjoined the Ferguson property. Mr. Thompson politely declined the offer at which point Mr. Ferguson responded that he would make life very difficult for Mr. Atkins and Mr. Thompson. Shortly thereafter, Mr. Atkins and Mr. Thompson began receiving regular visits from code enforcement, including one officer (Mr. Langston) who had on a prior occasion used an anti-gay slur against Mr. Thompson. Mr. Langston began making regular visits to Mr. Ferguson's home. Mr. Ferguson spent many hours watching the activities of Mr. Atkins, Mr. Thompson, their tenants, family members, and guests.

¹ The Original Application for Appeal is attached hereto as Exhibit H.

During the course of clearing their land and moving their equipment onto their property, Mr. Atkins was charged with criminal zoning violations for outdoor storage and the presence of “commercial vehicles”—trucks that they were using for moving and setting up their outdoor equipment. Those charges have now been adjudicated in general district court and have been appealed to circuit court.

On November 24, 2014, Mr. Atkins received a letter stating that he was violating § 36.2-424 of the Code of the City of Roanoke regarding the parking of a commercial-type vehicle, identified as a carousel. There is no carousel on Mr. Atkins’ property and there never has been. Apparently, the item at issue is the Gravitron amusement ride. At the time that Mr. Atkins purchased his real property, a Commercial Motor Vehicle was defined as follows:

“any motor vehicle or trailer used, designed or maintained for the transportation of persons or property for compensation or profit, and which is one of the following types of vehicles: trucks, tractor cabs, farm tractors, construction equipment, motor passenger buses, trailers, semi-trailers, taxis, limousines, tow trucks, dump trucks, roll back tow trucks, flatbed trucks, or step vans”

Section 20-71 of the Code of the City of Roanoke.

Apparently, however, following Mr. Atkins’ purchase of the property, the Zoning Ordinance was specifically amended to define Commercial Motor Vehicle as follows:

“any motor vehicle or trailer used, designed, or maintained for the transportation of persons or property for compensation or profit, and which is one (1) of the following types of vehicles: trucks, tractor cabs, farm tractors, construction equipment, motor passenger buses (excluding school buses currently used by the public or private institution of learning), trailers, semi-trailers, taxis, limousines, tow trucks, dump trucks, roll back tow trucks, flatbed trucks, or step vans, but not including vans, pickup trucks, and panel trucks”

Appendix A of the Zoning Ordinance, amended according to the Planning Commission’s response, as of October 20, 2014

The Gravitron amusement ride located at 508 Huntington Blvd. does not fall within either definition of commercial vehicle. These rides do not “sit” on any sort of travel trailer and they are not travel trailers. The wheels actually are the base of the ride; when the ride is permanently set and operational, the axles and wheels slide out and are removed. There is a separate wheel on the Gravitron, but its purpose is to turn the Gravitron in a circle. *See Exhibit A, photograph of the Gravitron.*

Moreover, the antique amusement rides, such as the Himalaya, began arriving at the property before the new definition was adopted by the City. Some of rides were in place on other residential property, and the Gravitron arrived at 508 Huntington in October, 2014. Accordingly, even were the Gravitron to be considered a commercial vehicle, it would be

permitted as a non-conforming use under § 36.2-700 *et seq.* Therefore, the Gravitron should be allowed to remain in place and used as intended.

None of these amusement rides will be higher than the roofline of the home located on the property. Additionally, proper buffering and screening, in accordance with the zoning ordinance is already planned. *See* Exhibit B. If further buffering and screening is required, Mr. Atkins is willing to comply and believes this matter can be properly handled under the buffering and screening regulations.

In fact, on the day that Mr. Atkins closed on the property, Ms. Melissa Pruitt with Roanoke City Code Enforcement met with Mr. Thompson and advised him that a complaint had been made about the items located at the Huntington Blvd. property that were visible from the road. She also advised them that the erection of a six foot privacy fence would bring them into compliance with any applicable code sections. By September 4, 2014, the fence had been installed and stained; the cost was approximately \$4,200.00. Additionally shrubbery was planted, and it is intended that landscaping will continue.

The actions of the City, and in particular the actions of Steve Langston in regard to zoning at this property appear to demonstrate a pattern of harassment, that is very personal in nature. Prior to this matter, Mr. Langston, while meeting with Mr. Thompson at another property, made an inappropriate anti-gay slur. This was reported to Mr. Langston's supervisor, and it was requested that Mr. Langston have no further involvement on behalf of the City with either Mr. Thompson or Mr. Atkins. Mr. Langston publicly advertises his personal views on homosexuality and gay marriage on his website, www.langstonmusic.com. *See also* Exhibit C, page from www.langstonmusic.com.

In the zoning matter at issue here, Steve Langston is again involved. On September 8, 2014, Mr. Langston and Matthew Duffy were seen inspecting the 508 Huntington Blvd. without permission, and without either Mr. Atkins or Mr. Thompson present. A concerned tenant confronted the men, and it was reported that Mr. Langston and Mr. Duffy became agitated and belligerent. Mr. Langston confirms this meeting, and goes on to explain the effort he made to photographically document the Atkins' property, as well as to make the statement, without any basis in the record to support it, that "these people are particularly defiant and apparently have no respect for their neighbors." *See* Exhibit D, October 17, 2014 Langston email. On November 21, 2014, he is clearly seeking advice on establishing other code sections that Mr. Atkins could be deemed in violation of, while also noting that, "this guy has created quite a stir in his neighborhood . . ." *See* Exhibit E, November 21, 2014 Langston email. On January 8, 2015, he goes on to make the statement, again without any supporting facts, that "these people . . . are a real menace to their neighborhood." *See* Exhibit F, January 8, 2015 Langston email.

Mr. Langston's actions constitute improper harassment which has been permitted by the City. Mr. Langston makes regular visits to Mr. Ferguson's home for the purpose of watching Mr. Atkins and Mr. Thompson at the 508 Huntington Blvd. property, and has made himself available to the neighbors, in a continued pursuit of Mr. Atkins and Mr. Thompson. Video footage is available upon request. His actions have far exceeded those of Roanoke City Code Compliance officer.

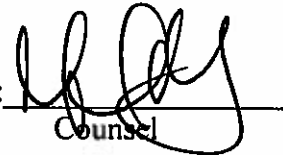
The City has overreached in regard to this zoning matter, and it appears that Mr. Atkins and Mr. Thompson have been targeted. Mr. Atkins and Mr. Thompson have invested over \$200,000.00 in the antique amusement rides they have collected to date. Two cable shows have contacted them regarding a televised story of their collection. These men bought this property, planning to turn it into their dream home, and they have received nothing but harassment for their efforts, both from the City as evidenced above, and from others. See Exhibit G, photographs of recently vandalized property.

Mr. Atkins reserves the right to provide additional photographs and exhibits to Board during the hearing in support of the grounds for appeal.

For the foregoing reasons, the determination of the Zoning Administrator should be REVERSED and the Appellant should be awarded his costs for having to obtain this decision.

Respectfully Submitted,

MICHAEL ATKINS

By: 
Counsel

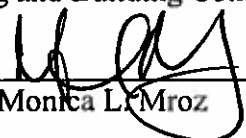
John P. Fishwick, Jr. (VSB #23285)
Monica L. Mroz (VSB #65766)
LichtensteinFishwick PLC
101 S. Jefferson St., Suite 400
P.O. Box 601
Roanoke, VA 24004-0601
(540) 345-5890 (Telephone)
(540) 345-5789 (Facsimile)
jpf@vatrials.com
monica@vatrials.com

CERTIFICATE OF SERVICE

I, Monica L. Mroz, hereby certify that on the 12th day of March, 2015, I mailed a copy of the foregoing Supplemental Narrative, first-class mail, postage prepaid, to

Steve Talevi, Assistant City Attorney
215 Church Avenue, SW
Room 464, Municipal Building
Roanoke, VA 24011

Assistant City Attorney and Counsel for the Planning and Building Commission.



Monica L. Mroz

EXHIBIT A

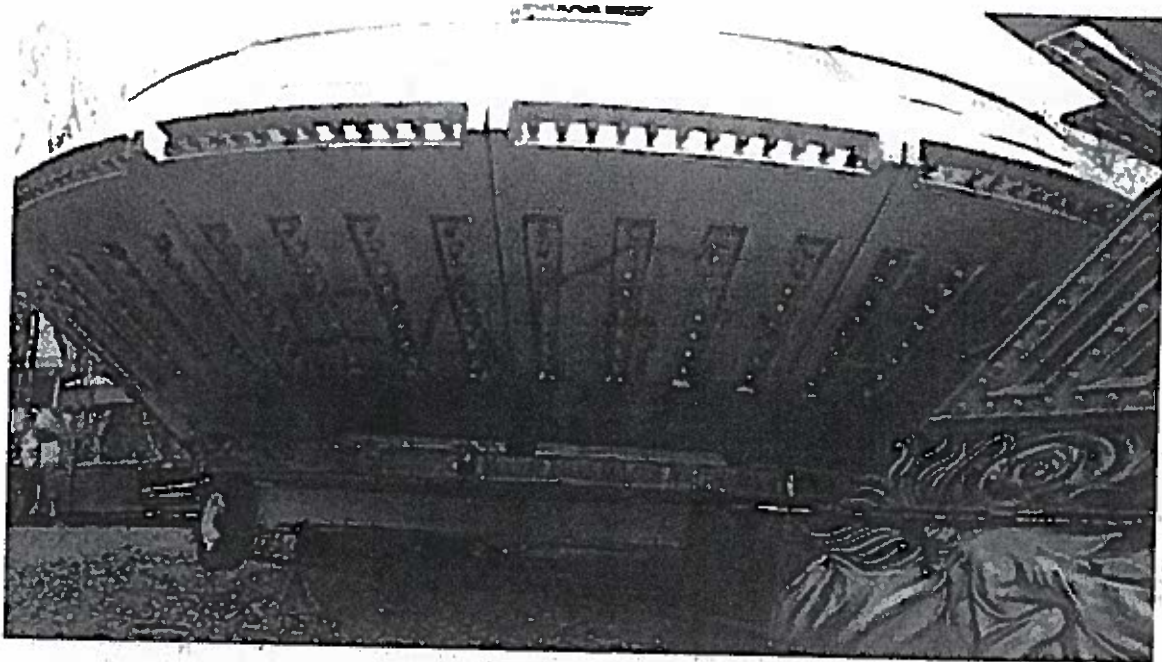


EXHIBIT B

1/16" = 2 feet

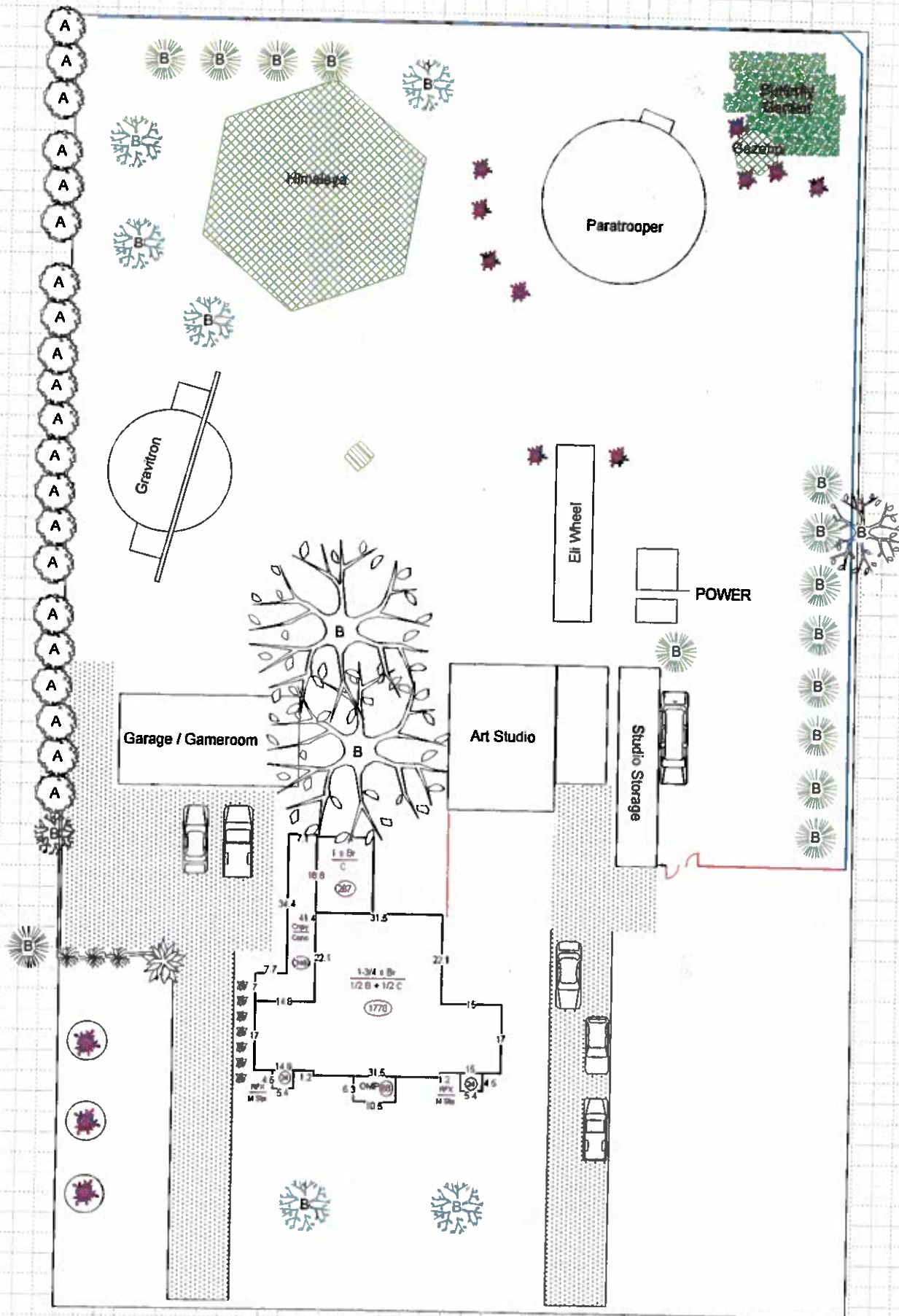


EXHIBIT C

LangstonMusic - Main

Home - Langston Music

404 - Page Not Found

Apps

Facebook

Instagram

Twitter

YouTube

LinkedIn

Google Plus

Pinterest

Tumblr

DeviantArt

SoundCloud

Spotify

Bandcamp

ReverbNation

SoundCloud

Spotify

Bandcamp

ReverbNation

http://www.langstonmusic.com/essays.html

Facebook

Instagram

Twitter

YouTube

LinkedIn

Google Plus

Pinterest

Tumblr

DeviantArt

SoundCloud

Spotify

Bandcamp

ReverbNation

Step by step, backsliding concessions only make the world progressively worse for everyone, and mostly for God's people who groan within themselves daily about the insanity of it all. Allowing homosexual marriages in a church is yet another step down the slippery moral slope to hell on earth. What is the matter with these so-called religious leaders? Can't they read? Have they forgotten the most basic of Bible lessons? Have they not studied the following verses or was this somehow glossed over in their seminary training? If so, we may ask, are the seminaries infiltrated with reprobate men who wish to reinterpret the Bible to fit their hidden personal perversions? The "proof is in the pudding" Organized, mainstream religion cannot be trusted to deliver the whole truth. Most of them will not cover lessons such as this because they are more concerned with their tax-exempt federal status and the filling of sanctuaries with warm bodies than truth:

Romans 1:22-32

Professing themselves to be wise, they became fools, . . . Wherefore God also gave them up to uncleanness through the lusts of their own hearts, to dishonour their own bodies between themselves: Who changed the truth of God into a lie, and worshipped and served the creature more than the Creator, who is blessed for ever. Amen. For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompence of their error which was meet (men do shameful things with each other, and as a result they bring upon themselves the punishment they deserve for their wrongdoing). And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not convenient: Being filled with all unrighteousness, fornication, wickedness, covetousness, maliciousness; full of envy, murder, debate, deceit, malignity; whisperers, backbiters, haters of God, despiteful, proud, boasters, inventors of evil things, (like poisonous "foods", weapons of war and wicked debt based money systems) disobedient to parents, without understanding, covenant breakers (such as those who use the Kol Nidre "prayer" so as to ignore oaths taken), without natural affection, (sociopaths, narcissistic) implacable, unmerciful: Who knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them.

God's law has not changed at any time. The very same commandment against same-sex unions was given to the ancient Israelites in Moses' day:

Leviticus 18:22

Thou shalt not lie with mankind, as with womankind: it is abomination.

You can read about the pathetic ponderings of the Southern Baptists here: <http://www.christianheadlines.com/columnists/aj->

426119_15118642590...jpg

Show all downloads...

EXHIBIT D

Gentlemen,

Mr. Ferguson just dropped by with more pictures of the property from last week. It looks like the problem is just getting worse. I've attached the pictures for your use.

Wendy J Jones,
Executive Director
2013 Business Advocate of the Year
Williamson Road Area Business Association, Inc
4804 Williamson Road; Roanoke, VA 24012
PO Box 7082; Roanoke, VA 24019
Phone: (540) 362-3293
Fax: (540) 362-5789
wraba@wraba.org
www.wraba.org
"Like" us on Face Book

-----Original Message-----

From: Steve.Langston@roanokeva.gov [mailto:Steve.Langston@roanokeva.gov]
Sent: Friday, October 17, 2014 10:41 AM
To: WRABA
Cc: Matthew.Duffy@roanokeva.gov
Subject: RE: What is the Status of 508 Huntington?

Ms. Jones,

Zoning Court would be on the second floor of the courthouse, usually the first courtroom on the right. There will be plenty of people there, and no mistaking it.

I will also testify with Mr. Duffy as I was there when we first investigated the problem. The tenant there (who I think is employed by the owner) was very rude and ordered us to leave. We then proceeded to the sidewalk and went over to the Ferguson's. He allowed us on his property to gather photographic evidence. We then went around the block and gained permission from another citizen to photograph the storage from her property. Since that time Matt has taken more photos. We appreciate the attendance of concerned citizens in court, which always makes an impression on the judge. These people are particularly defiant and apparently have no respect for their neighbors.




EXHIBIT E

Fw: 508 Huntington Blvd -- owner erecting an amusement ride

Steve Langston
Matthew Duffy

Jillian Papa Moore

11/21/2014 09:02 AM

This message has been forwarded.

Jillian,

The property owner at 508 Huntington is erecting a huge amusement ride in his back yard. He has already been cited and summoned for outdoor storage and commercial type vehicles in a residential zone. With this latest escapade it looks like he would also be in violation of 36.2-522(a)(1) for erecting a structure without a zoning permit (the ride is not a typical structure though) and also 36.2-311, a use not permitted in the RM-1 zone -- intending to operate an entertainment device usually found at a county fair.

Can you offer any advice on this? Do these code sections seem appropriate and/or can you think of any other codes that may be more appropriate. This guy has created quite a stir in his neighborhood and also we are receiving regular updates from WRABA, as you can see below.

Any help you can provide is appreciated.

Steve Langston
853-6465

----- Forwarded by Steve Langston/Employees/City_of_Roanoke on 11/21/2014 08:14 AM -----

From: WRABA <1wraba@gmail.com>
To: <Matthew.Duffy@roanokeva.gov>,
<Steve.Langston@roanokeva.gov>, <Chris.Chittum@roanokeva.gov>
Date: 11/20/2014 05:43 PM
Subject: RE: 508 Huntington Blvd

Gentlemen,

Any decision on citing this property owner for the carnival rides prior to going back to court in February?

Wendy J Jones,
Executive Director
2013 Business Advocate of the Year
Williamson Road Area Business Association, Inc
4804 Williamson Road; Roanoke, VA 24012
PO Box 7082; Roanoke, VA 24019
Phone: (540) 362-3293
Fax: (540) 362-5789
wraba@wraba.org
www.wraba.org
"Like" us on Face Book

-----Original Message-----

From: Matthew.Duffy@roanokeva.gov [

EXHIBIT F

508 Huntington - amusement park

Steve Langston

Jillian Papa Moore, Ian Shaw

01/08/2015 04:52 PM

Matthew Duffy

Gillian,

These people at 508 Huntington, with the amusement park erected in their back yard are a real menace to their neighborhood. The next door neighbors are elderly and are so intimidated that they are afraid to call 911 for fear of retaliation. They have been threatened in various ways. More large devices are being added to the collection and according to Wendy Jones with WRABA they have even blocked the street in moving more stuff in. We certainly hope that on February 11th the zoning board will take all of this into consideration when ruling on this case. What Mr. Atkins and company are doing, whether it is called "outdoor storage", "commercial vehicles" or "amusements devices" has no business in a residential neighborhood. We have many photos in Permits Plus as well.

Thanks.

Steve Langston

x6465

EXHIBIT G



EXHIBIT H

LAW OFFICES OF

GLENN ROBINSON & CATHEY PLC

MARK K. CATHEY

C. KAILANI MEMMER

VICTOR S. ("DINNY") SKAFF, III

JOHNEAL M. WHITE

MICHAEL J. HARTLEY

DIRECT DIAL (540) 767-2206

EMAIL: JWHITE@GLENNROB.COM

December 17, 2014

Board of Zoning Appeals
HAND DELIVERED

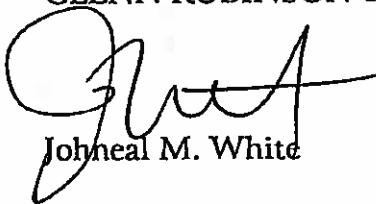
Re: Notice of Appeal, Michael C. Atkins
508 Huntington Blvd, NE Roanoke Va 24012

Dear Sir or Madam:

Enclosed please find a completed application for appeal in the matter of Michael Atkins, 508 Huntington Blvd NE, Roanoke Virginia. I represent Mr. Atkins in this matter. Please place this matter for hearing at the next appropriate meeting. If you should have any questions please feel free to give me a call.

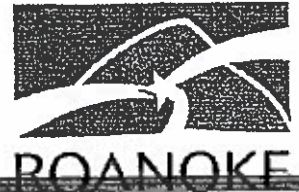
Very truly yours,

GLENN ROBINSON & CATHEY PLC



John M. White

Appeal Application



Planning Building and Development

Application Checklist

211 Church Avenue, S.W.

Roanoke, Virginia 24011

Phone: (540) 853-1730

Fax: (540) 853-1230

☒ Written Narrative

☒ Exhibits

☒ Filing Fee

Date:

12/16/14

Property Information:

Street Address:

508 Huntington Blvd NE

Official Tax No(s):

Parcel # 3181012

Size of Property (acres or square feet):

60467, 1.388 Acres

Base Zoning District:

RM-1

Overlay Zoning District:

Request is made for an appeal from Section 36.2-

424

, Zoning, Code of the City of Roanoke (1979), as amended.

Briefly describe the appeal, specifying the grounds for the appeal:

See attached.

Applicant Information:

Name:

Michael Atkins

Phone Number:

540-915-0502

Address:

508 Huntington Blvd NE

E-Mail:

N/A

X Applicant's Signature:

Owner Information:

Name:

Michael Atkins

Phone Number:

540-915-0502

Address:

508 Huntington Blvd NE

E-Mail:

N/A

X Owner's Signature:

Application accepted as submitted in accordance with the provisions of Chapter 36.2, Zoning, Code of the City of Roanoke (1979), as amended.

Secretary to the Board's Signature

Intake Date

Public Hearing Date



Planning, Building and Development
Division of Code Enforcement
Noel C. Taylor Municipal Building
215 Church Avenue, SW, Room 312
Roanoke, Virginia 24011
540-853-2311 PHONE

POSTED UNIFORM NOTICE OF RESIDENTIAL ZONING VIOLATION

Description of Location: 508 Hanbington

An inspection of the above-referenced property has been made and the following violation(s) observed. Your immediate action is required. The item(s) noted below constitute(s) a violation of City Code and must be corrected on or before the date of 1 December 2014 (hereinafter referred to as the "Compliance Deadline"). Failure to correct the violation(s) by the Compliance Deadline may result in the issuance of a summons and require a court appearance. Each day that any violation continues after notification shall be considered a separate offense for purpose of penalties and remedies. The official notice of violation will be sent to the address of record for the property owner. If you object to the notice of violation, you may appeal this notice to the Board of Zoning Appeals following the process and time limits presented in the official notice of violation. For additional information of corrective action required or how to appeal this notice, please contact the code inspector listed below.

Outdoor Storage: Section 36.2-311 Code of the City of Roanoke. Outdoor storage not permitted in Residential Zoned districts (R-12, R-7, R-5, R-3, RM-1, RM-2, RMF).

Parking of Commercial Motor Vehicles in a residential district: Section 36.2-424 Code of the City of Roanoke. Commercial motor vehicle may not be parked or stored in a residential zoned district for more than two (2) hours.

Zoning Permits: Section 36.2-522 Code of the City of Roanoke. No person shall erect, construct, reconstruct, move, demolish, add to, or structurally alter any structure without a zoning permit.

Parking or Storage of Recreational vehicles, motor homes, boats, campers, trailers: Section 36.2-425 Code of the City of Roanoke. May be parked or stored, but not inhabited for a period exceeding twenty-four (24) hours in a residential, CN, MX district provided that; licensed for the current year, located no closer to the street than the principal building, and not over thirty-two (32) feet in length or nine (9) feet in height.

Use not permitted: 36.2-311 code of the City of Roanoke. The below described use is not permitted in the zoning district.

Code of the City of Roanoke.

Specific Corrective action required: Remove carousel ~~and other~~ from residential property along with other miscellaneous commercial type vehicles.

Certification of Notice

I the undersigned hereby certify and affirm that I personally posted this Uniform Notice of Violation, this 24 day of November, 2014.

Inspector Matthew Duff

Phone 855-4469



Planning Building & Development
Code Enforcement Division

Noel C. Taylor Municipal Building
215 Church Ave SW, Room 312
Roanoke, Virginia 24011

ROANOKE

November 24, 2014

Certified Mail No: 7012 2920 0000 1967 6886 and regular mail

ZC140717

MICHAEL C ATKINS
508 HUNTINGTON BLVD NE
ROANOKE VA 24012

Dear MICHAEL C ATKINS:

Subject: 508 HUNTINGTON BLVD NE
Property Zoning: RM-1
Parcel: 3181012
Legal Description: NEW LOT 13A BLK 9 HUNTINGTON CT

A recent inspection of the above-referenced property has determined that there exists a violation of the Code of the City of Roanoke (1979), as amended, in regards to:

36.2-424 Parking of motor vehicles in residential districts.

No motor vehicle intended or designed to transport caustic, flammable, explosive, or otherwise dangerous materials, and no commercial motor vehicle or panel truck, shall be parked or left standing in a residential district for more than two (2) hours at any time.

PLEASE REMOVE COMMERCIAL TYPE VEHICLE, THE CAROUSEL FROM RESIDENTIAL PROPERTY AND OTHER MISCELLANEOUS COMMERCIAL VEHICLES FROM THE PROPERTY.

In order to avoid further action by this department, the violation must be removed or corrected within 10 days of receipt of this letter.

If you are aggrieved by this notice of zoning violation and order to comply with the above-cited Code provision, you are hereby notified that you have the right to appeal this order to the City of Roanoke's Board of Zoning Appeals within 30 days of receipt of this letter. If not appealed within 30 days the Zoning Violation and notice to comply shall be final. The filing fee is \$250 plus the cost of the legal advertisement for the public hearing.

Thank you in advance for your diligence in promptly correcting these violations. If you have any questions about this matter, including the appeal process, please feel free to contact this office at (540) 853-2344 between 8:00 a.m. and 5:00 p.m. Monday through Friday.

Sincerely,

Mathew Duffy
Codes Compliance Inspector

Board of Zoning Appeals:

Written Narrative:

Appellant, Michael Atkins, is a resident of the City of Roanoke. He resides at 304 Huntington Blvd, NE. On November 24, 2014, Mr. Atkins received a letter stating that he was violating the city regulations regarding the parking of commercial vehicles. This appeal has been noted because the devices on Mr. Atkins property are not commercial vehicles. This is made abundantly clear in the very notice posted to Mr. Atkins' door which states "[r]emove carousel from residential property along with other miscellaneous commercial type vehicles." The inspector does not even describe the devices as commercial vehicles – but "commercial type" vehicles. (See attached notice of violation).

In this case, the notice of violation states that there is a violation of 36.2-424 of the Code of the City of Roanoke. This code section states:

Sec. 36.2-424. - Parking of motor vehicles in residential districts.

No motor vehicle intended or designed to transport caustic, flammable, explosive, or otherwise dangerous materials, and no commercial motor vehicle or panel truck, shall be parked or left standing in a residential district for more than two (2) hours at any time except for:

- (a) School buses and emergency vehicles;
- (b) Vehicles being loaded or unloaded;
- (c) Vehicles belonging to or used by the occupant of a business premises, when the business premises constitute a legally nonconforming use;
- (d) Vehicles, the occupants of which are actually engaged in work on the premises;
- (e) Vehicles being used in connection with utility or street work; and
- (f) Tow trucks and roll back tow trucks which are on call on the City's towing list.

The City Code section on zoning does not define what a commercial vehicle is, however, the section on motor vehicles does. Section 20-71 of the City Code as it relates to motor vehicles and traffic defines a commercial vehicle as:

(a) For purposes of this section, a commercial motor vehicle shall be any motor vehicle or trailer used, designed or maintained for the transportation of persons

or property for compensation or otherwise, which is one of the following: motor vehicles, trucks, tractor units, farm tractors, construction equipment, motor passenger buses, trailers, semi-trailers, taxis, limousines, tow trucks, dump trucks, roll back tow trucks, flatbed trucks, or step vans.

(d) For purposes of subsections (a) and (b) of this section, vans, pickup trucks and panel trucks shall not be considered commercial motor vehicles.

Additionally, for anything not defined in the City Code, Section 20-6 of the City Code incorporates the definitions used in State law. In order to be a "commercial vehicle" the object must first be considered a "vehicle." According to Virginia Code 46.2-100, governing motor vehicles, a vehicle is defined as:

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of Chapter 8 (§ 46.2-800 et seq.), bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

The Virginia Court of Appeals has held that to be considered a "vehicle" under this section of the Code the equipment must be intended to be used "on a highway", i.e. a public road. See *Prillaman v. Com.*, 199 Va. 401, 406, 100 S.E.2d 4, 8 (1957). See also *In re Potter*, No. 08-17658-SSM, 2009 WL 902415, at *3 (Bankr. E.D. Va. Mar. 24, 2009) (holding that a powerboat is not a motor vehicle under the statutory definition because it is not a vehicle that operates on a highway.).

The letter of November 24, 2014 attempts to describe the offending "vehicles." It categorizes them not as commercial vehicles but "commercial type vehicles, the carousel...and other miscellaneous commercial vehicles from the property."

The ordinance in this case is clear on its face, it prohibits the parking of commercial vehicles not "commercial type vehicles" a term that does not appear anywhere in the City Code. The only clearly described device in the notice is a carousel – which is a device not operated on the public highways and is operated exclusively in a stationary

manner (as far as the device, not the rider). Clearly this does not qualify as a vehicle, and is therefore not a commercial vehicle, and therefore does not fall under 36.2-424

photographs of all of these alleged offending "commercial type" vehicles are being taken and will be presented to Board in this matter. All of them do not qualify as a vehicle, and thus are not commercial vehicles. The devices which the inspector miscategorized would be considered "amusement devices" under Virginia Administrative Code 13 VA ADC 5-31-20¹ if they were open to the public, but they are not open to the public as defined in the Administrative Code.

Furthermore, as the City Code makes clear commercial vehicles are vehicles "used, designed or maintained for the transportation of persons or property for compensation or profit." The amusement devices in this case are being used purely for private entertainment purposes. The devices are not open to the public, there is no fee or compensation being obtained from their presence. For this reason they do not meet the "commercial" part of the definition of "commercial vehicle."

The type of overreach displayed by the notice of violation in this matter is inexcusable. It is not the purview of Code Inspectors to make up categories of "vehicles" or to apply the code in a clearly imprecise manner. Such imprecision raises the specter of inequitable targeting of individuals or groups. Allowing such practices to continue may be viewed as an endorsement of such targeting.

Wherefore, the determination of the zoning inspector should be REVERSED and the Appellant should be awarded his costs for having to obtain this decision.

¹ "Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, but excluding snow tubing parks and rides, ski terrain parks, ski slopes, and ski trails, and (ii) passenger tramways. For the purpose of this definition, the phrase "open to the public" means that the public has full access to a device or structure at an event, irrespective of whether a fee is charged. The use of devices or structures at private events is not considered to be open to the public.

Board of Zoning Appeals:

Written Narrative:

Appellant, Michael Atkins is a resident of the City of Roanoke. He resides at 508 Huntington Blvd, NE. On November 24, 2014, Mr. Atkins received a letter stating that he was violating the city regulations regarding the parking of commercial vehicles. This appeal has been noted because the devices on Mr. Atkins property are not commercial vehicles. This is made abundantly clear in the very notice posted to Mr. Atkins' door which states "[r]emove carousel from residential property along with other miscellaneous commercial type vehicles." The inspector does not even describe the devices as commercial vehicles – but "commercial type" vehicles. (See attached notice of violation).

In this case, the notice of violation states that there is a violation of 36.2-424 of the Code of the City of Roanoke. This code section states:

Sec. 36.2-424. - Parking of motor vehicles in residential districts.

No motor vehicle intended or designed to transport caustic, flammable, explosive, or otherwise dangerous materials, and no commercial motor vehicle or panel truck, shall be parked or left standing in a residential district for more than two (2) hours at any time except for:

- (a) School buses and emergency vehicles;
- (b) Vehicles being loaded or unloaded;
- (c) Vehicles belonging to or used by the occupant of a business premises, when the business premises constitute a legally nonconforming use;
- (d) Vehicles, the occupants of which are actually engaged in work on the premises;
- (e) Vehicles being used in connection with utility or street work; and
- (f) Tow trucks and roll back tow trucks which are on call on the City's towing list.

The City Code section on zoning does not define what a commercial vehicle is, however, the section on motor vehicles does. Section 20-71 of the City Code as it relates to motor vehicles and traffic defines a commercial vehicle as:

- (a) For purposes of this section, a commercial motor vehicle shall be any motor vehicle or trailer used, designed or maintained for the transportation of persons or property for compensation or profit, and which is one of the following types of vehicles: trucks, tractor cabs, farm tractors, construction equipment, motor

passenger buses, trailers, semi-trailers, taxis, limousines, tow trucks, dump trucks, roll back tow trucks, flatbed trucks, or step vans.

(d) For purposes of subsections (a) and (b) of this section, vans, pickup trucks and panel trucks shall not be considered commercial motor vehicles.

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The letter of November 24, 2014 attempts to describe the offending "vehicles." It categorizes them not as commercial vehicles but "commercial type vehicles, the carousel...and other miscellaneous commercial vehicles from the property."

The ordinance in this case is clear on its face, it prohibits the parking of commercial vehicles not "commercial type vehicles" a term that does not appear anywhere in the City Code. The only clearly described device in the notice is a carousel – which is a device not operated on the public highways and is operated exclusively in a stationary manner (as far as the device, not the rider). Clearly this does not qualify as a vehicle, and is therefore not a commercial vehicle, and therefore does not fall under 36.2-424 of the City Code.

The other alleged "commercial type" vehicles are similarly other amusement devices. Photographs of all of these alleged offending "commercial type" vehicles are being taken and will be presented to Board in this matter. All of them do not qualify as a vehicle, and thus are not commercial vehicles. The devices which the inspector miscategorized would be considered "amusement devices" under Virginia Administrative Code 13 VA ADC 5-

31-20¹ if they were open to the public, but they are not open to the public as defined in the Administrative Code.

Furthermore, as the City Code makes clear commercial vehicles are vehicles “used, designed or maintained for the transportation of persons or property for compensation or profit.” The amusement devices in this case are being used purely for private entertainment purposes. The devices are not open to the public, there is no fee or compensation being obtained from their presence. For this reason they do not meet the “commercial” part of the definition of “commercial vehicle.”

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¹ “Amusement device” means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, but excluding snow tubing parks and rides, ski terrain parks, ski slopes, and ski trails, and (ii) passenger tramways. For the purpose of this definition, the phrase “open to the public” means that the public has full access to a device or structure at an event, irrespective of whether a fee is charged. The use of devices or structures at private events is not considered to be open to the public.